

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

LEPAGE BAKERIES, INC.

Employer<sup>1</sup>

and

CHAUFFEURS, TEAMSTERS & HELPERS  
LOCAL UNION 633, a/w INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

Petitioner

Case 1-RC-21501

**DECISION AND DIRECTION OF ELECTION**<sup>2</sup>

Chauffeurs, Teamsters & Helpers Local Union 633, a/w International Brotherhood of Teamsters (Union) is seeking to represent a bargaining unit of all route sales associates and spare route sales associates employed by Lepage Bakeries, Inc. (Employer) at its Manchester, Dover, Belmont, Hudson, Berlin, Littleton, and North Conway, New Hampshire, and Leominster, Massachusetts branch distribution facilities, but excluding all other employees, professional employees, clerical employees, guards, and supervisors<sup>3</sup> as defined in the Act. The Employer contends that the unit must also include its Brattleboro, Vermont branch distribution facility, and that, in addition to route sales associates and spare route sales associates, the unit must also include the marketing representatives and thrift store clerks employed at the listed facilities.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

<sup>3</sup> The parties stipulated and I find that regional sales supervisors Kevin Lavey, George Ivas, Bob McKinnon, Ken Delgado, Eric Benker, Bernie Martel, and Earl Dalkas are supervisors within the meaning of Section 2(11) of the Act and, therefore, are excluded from the unit found appropriate. Based on the record as a whole, I find that area sales managers Ken Ouellette, Scott Russell, and Tim Jackson, are also supervisors within the meaning of Section 2(11) of the Act and are excluded from the unit.

I conclude that the unit, as petitioned for, excluding the Brattleboro, Vermont facility, is an appropriate unit and that the thrift store clerks and the marketing representatives lack a sufficient community of interest with the route sales associates and spare route sales associates to require their inclusion in the unit. There are approximately 78 employees in the unit found appropriate.

Accordingly, upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **5. FACTS**

The Employer, with its principal office located in Auburn, Maine, is engaged in the production, sale, and distribution of baked goods in the States of Maine, New Hampshire, Massachusetts, Vermont, New York, and Connecticut. The Employer bakes its products at two Lewiston, Maine facilities and a third facility at Brattleboro, Vermont. The Lewiston plants produce bread, rolls, and donuts. The Brattleboro plant produces hamburger rolls for Burger King stores, Country Kitchen and private brand, and twelve count pan dinner rolls. Transport drivers, who are employed by an outside contractor, transport the product from the baking facilities to the Employer's branch distribution facilities in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and New York for distribution by the Employer's route sales associates to client stores, over predetermined routes.

The Employer's administrative offices are located at Auburn, Maine. The Employer has an associates' handbook that applies company-wide, as do the Employer's benefits and policies. There is one human resources office that is located at Lewiston, Maine.

The branch distribution facilities are under the management of Senior Vice President of Sales Bill St. Lawrence, who is located at the Auburn headquarters. The Employer divides its branch distribution facilities into a Northern Division and a Southern Division. There are two vice presidents of sales who are responsible for

overseeing the sales and operations in each division.<sup>4</sup> The Northern Division, under Vice President of Sales Peter Roy,<sup>5</sup> includes the Employer's nine Maine branch facilities, the Employer's five branches in Northern and Central New Hampshire (Belmont, Littleton, Dover, North Conway, and Berlin), one Northern Vermont branch (Burlington), and five branches in upstate New York. Roy maintains his office at Auburn, Maine.

The Southern Division, under Vice President of Sales Tom Cerratini,<sup>6</sup> includes the two branches in southern New Hampshire, which are located in Hudson and Manchester, two southern Vermont branches, which are located in Brattleboro and White River Junction, and one branch in Leominster, Massachusetts.<sup>7</sup> Cerratini maintains his office at Hudson, New Hampshire.

The parties are in agreement that the unit should include the five New Hampshire branches from the Northern Division plus the two New Hampshire branches and the Leominster, Massachusetts branch from the Southern Division.<sup>8</sup> The Employer contends, however, that the unit must also include one of the Employer's two Vermont branches in the Southern Division, which is the one at Brattleboro. Neither party seeks to include the Southern Division's White River Junction, Vermont branch or the Northern Division's Burlington, Vermont branch, or any branches in Maine, Connecticut, or New York.

Reporting directly to the two vice presidents of sales are nine area sales managers. The area sales managers are responsible for the sales and operations within a particular

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<sup>4</sup> There is one branch at Windsor Connecticut, which is directly under Senior Vice President of Sales St. Lawrence.

<sup>5</sup> Roy is also responsible for the Hannaford Brothers, Price Chopper, Associated Grocers of Maine, Associated Grocers of New England, and Food City accounts.

<sup>6</sup> Cerratini is also responsible for the Stop & Shop, Crosby's, and Johnny's Food Master accounts.

<sup>7</sup> Although the Employer states in its post-hearing brief that it has other Massachusetts branch facilities in addition to Leominster, there was no hearing testimony whatsoever on this matter, nor does the Employer supply any further information in its post-hearing brief. In any event, neither party seeks to include any Massachusetts location in the unit other than Leominster.

<sup>8</sup> The geographic area serviced by these branches is generally the state of New Hampshire and northeastern and central Massachusetts. There is some overlap, however, into Vermont and Maine near border areas. In addition, the area covered by the Brattleboro branch, which the Employer seeks to include, has some overlap into New Hampshire. Thus, the Leominster, Massachusetts branch covers central Massachusetts and parts of south-central New Hampshire. Hudson, New Hampshire covers Nashua, New Hampshire down to Boston and the North Shore area of Massachusetts. Manchester covers central Manchester through to Raymond, New Hampshire. Dover covers Rochester, New Hampshire down the coast to Gloucester, Massachusetts. North Conway services the North Conway, New Hampshire area into Fryeburg, Maine. Belmont covers the Laconia and Concord, New Hampshire area. Berlin, New Hampshire covers that northern area. Littleton covers that area through to Newport, Vermont. Brattleboro covers Bennington, Vermont through to Keene and Hinsdale, New Hampshire.

geographic area, which may include two or more branch distribution facilities. They oversee the operations at the branches including the daily routing and distribution of the product, solicitation of new business, and supervision of the thrift store operation. Reporting to the area sales managers are the regional sales supervisors, who are the first line supervisors at the branch facilities.

Three of the Employer's nine area sales managers oversee branch facilities at issue in this proceeding. There are two Northern Division area sales managers, Ken Ouellette and Scott Russell. Ouellette, who is located at Belmont, oversees the Belmont and Littleton, New Hampshire branches. Russell, who is located at Dover, oversees the Dover, North Conway, and Berlin, New Hampshire branches. Southern Division Area Sales Manager Tim Jackson, who is located at the Hudson branch, oversees the branch facilities at Hudson and Manchester, New Hampshire. There is no area sales manager charged with directly overseeing the Brattleboro or Leominster branches. Brattleboro Regional Sales Supervisor Earle Dalkas and Leominster Regional Sales Supervisor Ken Dalgado report directly to Southern Division Vice President Cerratini, although it appears that Area Sales Manager Tim Jackson would cover those branches if needed.

Typically, a branch facility has an office, a sales room, two to six loading bays, a transport loading bay, a thrift store outlet, and a warehouse area. Each branch is under the direct supervision of a regional sales supervisor. The route sales associates and spare route sales associates work out of, but away from, the branch facility, while the thrift store associates work at the store located in the branch facility.<sup>9</sup>

Job applicants for any of the regional positions may apply in person at a local distribution center or may apply via an 800 number automated system. Interviews are conducted by the regional sales supervisors, along with someone from human resources.

### **Route Sales Associates & Spare Route Sales Associates**

Route sales associates are responsible for the sale and distribution of the product to the client stores over a certain fixed route. Spares perform the same duties, but have no fixed route. A spare becomes a regular route sales associate either by the addition of a new route or by the departure of a route sales associate.

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<sup>9</sup> The personnel at each branch facility in issue are as follows:

Hudson—Area Manager Tim Jackson, Regional Sales Supervisors Kevin Lavey and George Ivas, 23 route sales associates, one spare, three thrift store clerks; Manchester—Regional Sales Supervisor Bob McKinnon, eleven route sales associates, one spare, no thrift store; Leominster—Regional Sales Supervisor Ken Delgado, eleven route sales associates, one spare, two thrift store clerks; Dover—Area Manager Scott Russell, Regional Sales Supervisor Eric Benker, ten route sales associates, one spare, two thrift store clerks; Belmont—Area Manager Ken Ouellette, ten route sales associates, no spares, two thrift store clerks; Littleton—(also under Ouellette), three route sales associates, no spares, two thrift store clerks; North Conway—Regional Sales Supervisor Bernie Martel, three route sales associates, no spares, two thrift store clerks; Berlin—(also under Martel), three route sales associates, no spares, two thrift store clerks; Brattleboro—Regional Sales Supervisor Earl Dalkas, nine route sales associates, no spares, two thrift store clerks.

The two vice presidents of sales determine the route configurations in their divisions. Available routes are put up for bid at the branch where the route is located. The posting includes information on the businesses on that route, the dollar sales, and the recalls<sup>10</sup> required. The bid is posted for three days, during which time all the regular route sales associates at that particular branch are the only ones entitled to bid on it. If after three days there are no bidders, the Employer assigns the route to the most senior spare at that branch. If there were no bids and no spares at that location, the Employer opens the bidding to route sales associates at other branches.

The route sales associates work five days per week, Monday, Tuesday, Thursday, Friday, and Saturday. Typically, they work a ten to eleven hour day. They report to work at the branch between 2 a.m. and 4 a.m. The first route sales associate who arrives is responsible for opening the branch each morning.

When the route sales associate arrives at the branch in the morning, the bulk transport driver has already arranged all of the day's product in route specific 10 by 12 foot grids. The route sales associate, using his hand held computer, checks to see that the route's order is complete by comparing the product on hand against the generated daily order. The daily order is a combination of orders that have been generated by the route sales associate himself, customer calls to the thrift store, or customer calls to the Employer's 800-telephone number. After the route sales associate checks the order, he loads it into a company truck and sets out on his route. All route sales associates have left the branch by 9:00 a.m. when the thrift store opens.

The route sales associates deliver the product to the stores on the route and merchandise it, that is, they arrange it on the store shelves. They check the "sell-by" dates on the product already there and remove any out-of-date unsold product for return to the branch thrift store for resale. For certain stores on the route, the route sales associate may make a recall run later in the day to again replenish the shelf stock with product he has stored in the back of the store. Both the route sales associates and spares wear a uniform of navy blue Dockers pants, red and white pinstripe shirt, cotton/polyester blue jacket with a Country Kitchen logo, and a hat.

Route sales associates are paid on a "base plus commission" formula. The base is \$245 per week. The commission varies, depending on the product. The commission on premium product, which is Country Kitchen, Barowsky, and Sunbeam branded product, is 9.5 percent of the route store's actual sales. On full-service private label product, which is the store-brand product, the commission is 5 percent. There is a 3 percent commission on the fast food drop business, which is delivery to Burger King restaurants. That product is just dropped off, however, with no merchandising or return of unused product. The route sales associate does not receive any commission for returned product sold at the thrift store. The actual weekly income for a route sales associates varies

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<sup>10</sup> Recalls are return trips to a particular store later in the same day to replenish the shelves with stock from the back of the store.

between \$650-\$1100, depending on the route structure, types of businesses on the route, and the geographic area. Eighty percent of the route sales associates earn within the range of \$800 per week.

In addition to bidding on the daily routes, route sales associates separately bid, by seniority, on five-hour Sunday recall routes. Recall route compensation, which ranges from \$130 to \$150 per day, would be in addition to the route sales associates' average weekly compensation. A route sales associate on a Sunday recall route restocks a store's shelves with product that has been stored in the back of the store during the week by the sales associate assigned to that route. These recall routes usually cover stores within the same geographic area as that covered by a particular branch during the week. There are two exceptions, however, cited in the record. Concord, New Hampshire, which is serviced by the Belmont branch during the week, is part of the Manchester branch's Sunday recall route. The Athol, Massachusetts Shop N'Save, which is on a Leominster route during the week, is on a Brattleboro Sunday recall route.<sup>11</sup> Therefore, route sales associates at both the regular branch and the Sunday route branch may bid on the recall route. Route sales associates are discouraged, however, from bidding on Sunday recall routes that are not within their general geographic area.

Spare route sales associates are paid a lower base rate, but receive a higher commission. The record does not contain the particular base or commission rates, however. Spares are assigned to cover routes on a week-to-week basis, as needed, either in their assigned branch or another branch. If the distance between facilities is about an hour, the spare has the option of commuting or having lodging provided. Over an hour in distance, the Employer assigns lodging. A Belmont spare has spent time in Manchester. Recently a Belmont spare spent a few weeks in Dover covering a vacation. A Dover spare has spent time in Belmont and Manchester.<sup>12</sup> A Brattleboro spare has spent time in White River Junction, Leominster, Hudson, and Manchester.<sup>13</sup> At times, spares at the facilities in issue have been sent to facilities in Vermont. Maine spares have, on occasion, been sent to branches in issue, but no spares at the branches in issue have been sent to Maine.<sup>14</sup>

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<sup>11</sup> The Athol Shop N'Save route, which historically was serviced by the Leominster branch, was transferred to Brattleboro for about an eighteen-month period due to staffing shortages at the Leominster branch. About six months ago the regular weekly route was transferred back to Leominster.

<sup>12</sup> Belmont and Dover are about 45 minutes apart. Dover and Manchester are about 45 minutes, to an hour apart.

<sup>13</sup> Although the record does not contain the distances between Brattleboro and these branches, I take official notice that the distances and travel times are as follows: Brattleboro to Leominster - 68 miles, one hour twenty-five minutes; Brattleboro to White River Junction - 64 miles, one hour thirteen minutes; Brattleboro to Manchester - 74 miles, one hour fifty-three minutes; Brattleboro to Hudson - 74 miles, two hours nine minutes.

<sup>14</sup> There is no record testimony, however, on how often these temporary transfers have occurred, specifically when they occurred, or how much time a spare has spent at these locations.

Regular route sales associates do not service any routes at their home branch other than their own, nor do they travel to other branches. There is some testimony in the record, however, that the Leominster regional sales supervisor has been sent, on occasion, to Brattleboro to run a route and the Brattleboro regional sales supervisor has gone into the Hudson and Leominster branches to work. There is no evidence, however, as to how often this has occurred, or when.

Some route sales associates have voluntarily transferred to other branches. About a year ago, Chris Attridge transferred from Brattleboro to Manchester and Ed Lamontaigne transferred from Hudson to Manchester. In addition, Curt Ceichon transferred from Hudson to Manchester and Phil Salona transferred from Hudson to Leominster. Recently, Casey McGlynn transferred from Manchester to Belmont. Route sales associates make their transfer requests to the human resources office, and human resources and the two vice presidents of sales make the decision.

Both route sales associates and spares receive paid vacation,<sup>15</sup> sick leave,<sup>16</sup> holiday pay, fully paid health insurance, and are eligible to participate in the Employer's profit sharing and 401(k) plans.

The vice presidents of sales act on recommendations from the regional sales supervisors and the area sales managers in their divisions regarding disciplinary issues and other personnel matters. They also make any decision on increases in commissions or base pay for route sales associates and spares.

### **Marketing Representatives**

In addition to the area sales managers, the Employer has key account managers, who also report directly to the two vice presidents of sales. Key account managers maintain an office at, and work out of the premises of the particular "key account" client. Reporting, in turn, to the key account managers are the marketing representatives.

The marketing representatives support the route sales associates by setting up special promotions and displays at the key account stores, checking on the merchandising of the product, and looking for ways to expand the Employer's presence at the store. Of the Employer's nine marketing representatives, the Employer contends five of them cover branches in issue. There is, however, no evidence in the record as to specifically where these marketing representatives are located. Rather, it appears that the marketing representatives are not assigned to any particular branch, but instead work out of their homes. The Employer provides them with a car, with which they commute directly to the stores. They usually have a set number of stores that they visit in a particular day. The

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<sup>15</sup> One week after one year of service, two weeks after two years of service, and three weeks after seven years of service.

<sup>16</sup> Five days per fiscal year.

two vice presidents of sales, in conjunction with the key account managers, determine which stores they must visit.

Typically, the marketing representatives' hours are 7 a.m. to 5 p.m., although the record does not reflect how many or which days per week they work. At the end of the day, they stop in at the branch facility in the area where they were visiting to make phone calls, adjust orders to the stores they visited, discuss with the supervisor and the route sales associates how the sales are going, and suggest adjustments to product mix and how it is being merchandised. They are paid a salary, which ranges from \$600 to \$700 per week. They receive medical insurance, vacation, and are eligible to participate in the profit sharing and 401(k) plans. Because they are salaried they do not, however, receive paid sick leave or paid holidays. The vice presidents of sales determine any wage increases for the marketing representatives. There is no evidence in the record as to whether or not the marketing representatives wear a uniform in the course of their duties.

There have been no occasions when a marketing representative has transferred to a route sales associates or spare position, nor have any route sales associates transferred to a marketing representative position.

### **Thrift Store Associates**

At most of the branch facilities, the Employer operates thrift stores where it sells returned products that are beyond the sell-by date. The stores are open 9 a.m. to 5 p.m., Monday through Friday and 9 a.m. to 3 p.m. on Saturdays.

All of the thrift store associates are part-time employees who work from 22-25 hours per week. They are paid on an hourly basis, starting at \$9.30 per hour up to a top rate of \$11.25 per hour. Discretionary wage increases of ten to twenty-five cents per hour are paid quarterly based on a performance evaluation. Decisions on pay increases for thrift store clerks are made by the vice presidents of sales on recommendations from the regional sales supervisor.

The branch regional sales supervisor determines the individual schedules, which are assigned rather than bid upon. Thrift store associates receive vacation benefits and are eligible to participate in the profit sharing and 401(k) plans. Thrift store associates are not eligible, however, for health insurance, sick leave, or holiday pay. Thrift store associates wear a uniform consisting of a smock with a logo on it.

The route sales associates return product that has passed its sell-by date to the branch warehouse each afternoon. The thrift store associates, in turn, stock it on the shelves and merchandise it. During the hours the thrift store is open, the thrift store associates may also answer the telephones, open new accounts for the route sales associates, and clean the store. A thrift store associate is the one who closes the branch facility in the evening. When thrift store associates take an order that has a next day delivery, they arrange with the regional sales supervisor for a dock transfer, which is a reallocation of product that is already on hand at the branch. If the order has two days



lead time, the thrift store associate passes that order on to the Auburn headquarters. If there is at least three days lead-time, the thrift store associate passes the order directly to the route sales associate, who, in turn, enters it directly into his hand-held computer. Thrift store associates make the bank deposits for the route sales associates at the end of the day. At Manchester, where there is no thrift shop, the route sales associates make their own bank deposits.

No thrift store associates have transferred to route sales associates or spare positions, nor have route sales associates or spares become thrift store associates. There is one occasion cited in the record, however, when a route sales associate was allowed to work in the thrift store for the period of time that his driver's license was under suspension. The record does not reflect where this route sales associate worked or when this occurred.

## **ANALYSIS AND CONCLUSIONS**

### **1. Whether the Unit Must Include the Brattleboro Facility:**

In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. *P.J. Dick Contracting*.<sup>17</sup> The Board, however, does not compel a petitioner to seek any particular appropriate unit. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Black & Decker Mfg. Co.*<sup>18</sup> "There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be "'appropriate.'" *Morand Bros. Beverage Co.*;<sup>19</sup> see *Staten Island University Hospital v. NLRB*;<sup>20</sup> see also *American Hospital Assn. v. NLRB*,<sup>21</sup> interpreting the language of Section 9(a) as suggesting that "employees may seek to organize 'a unit' that is 'appropriate'—not necessarily the single most appropriate unit." A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with

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<sup>17</sup> 290 NLRB 150 (1988).

<sup>18</sup> 147 NLRB 825, 828 (1964).

<sup>19</sup> 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951).

<sup>20</sup> 24 F.3d 450, 455 (2d Cir. 1994).

<sup>21</sup> 499 U.S. 606, 610 (1991).

that requested unit does not exist. *Visiting Nurses Association of Central Illinois*,<sup>22</sup> *P. Ballantine & Sons*,<sup>23</sup> accord: *Ballentine Packing Co.*<sup>24</sup>

In determining the community of interest among employees working at more than one location, the Board examines traditional community of interest factors, including geographic proximity, local autonomy, employee interchange and interaction, functional integration, the employees' terms and conditions of employment, bargaining history, and extent of union organization. *NLRB v. Carson Cable TV*.<sup>25</sup> Here, none of these factors, either separately or taken as a whole, mandates the inclusion of the Brattleboro distribution branch with the petitioned-for unit of New Hampshire and Leominster branches.

The route sales associates and spare associates at all of the Employer's distribution facilities share the same compensation, hours, and working conditions, and are subject to the same uniform policies, procedures, and overall management. The Board has held, however, that centralized administration is not the primary factor it will consider in determining whether employees at two facilities share a community of interest. See *Renzetti's Market, Inc.*<sup>26</sup> Moreover, both parties are in agreement that the scope of the unit need not be employer-wide and need not be division-wide, and that the scope of the unit need not include all the Vermont distribution facilities. The only issue is whether the scope of the unit must include the Brattleboro, Vermont branch. Therefore, the fact that the Brattleboro route sales associates and spares share the same wages, hours, working conditions, and overall management as those at the other branches included in the unit is insufficient to force the inclusion of the Brattleboro employees to the exclusion of other locations of the Employer.

Bargaining history is not a factor since there is none. Nor does geographic proximity require inclusion of Brattleboro. The Leominster branch, which is the closest to Brattleboro, is 68 miles away. The drive time between the two locations is one hour and twenty-five minutes. The White River Junction branch, which is 64 miles from Brattleboro and which the Employer does not seek to include, is slightly closer to Brattleboro.

There has been no temporary interchange of regular route sales associates between Brattleboro and the branches sought to be included in the unit. Although a Leominster Shop N'Save route was transferred for a period to Brattleboro, the transfer

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<sup>22</sup> 324 NLRB 55 (1997).

<sup>23</sup> 141 NLRB 1103, 1107 (1963).

<sup>24</sup> 132 NLRB 923, 925 (1961).

<sup>25</sup> 795 F.2d 879 (9th Cir. 1986).

<sup>26</sup> 238 NLRB 174, 175 (1978).

did not include a route sales associate. In fact, the reason the Employer transferred the route was because there was a shortage of staff at the Leominster branch. Even though the Shop N'Save Sunday recall route is run out of Brattleboro, a Brattleboro associate on that route would not encounter any Leominster associates in the course of servicing that route. Apart from the isolated instance of a Brattleboro associate on the Sunday Shop N'Save recall route replenishing the shelves with product a Leominster associate has left at the store, there is no functional interchange.

There has been only one permanent transfer of a route sales associate from Brattleboro to a branch sought to be included in the unit and none from a branch sought to be included in the unit to Brattleboro. There has been some assignment of a Brattleboro spare to the New Hampshire and Leominster locations, but spares from Maine locations have also been assigned to the New Hampshire locations. Moreover, currently there are no spares at the Brattleboro location and there is no evidence as to how long ago this occurred. While there is some evidence in the record that regional sales supervisors from Leominster and Brattleboro have traveled to other branches in issue to help out, they are not employees who would be included in the unit. Finally, each location has substantial local autonomy since each location has resident first line supervision in the regional sales supervisor. Accordingly, I find that the evidence does not require the inclusion of the Brattleboro facility with the petitioned-for facilities. *Associated Milk Producers, Inc.*<sup>27</sup>

## **2. Whether the Unit Must Include Marketing Representatives and Thrift Store Associates:**

Applying the traditional community of interest standards referred to above, I find that the route sales associates and spares share a community of interest sufficiently distinct from both the marketing representatives and the thrift store associates such as to constitute a separate appropriate unit. Therefore, I will exclude the marketing representatives and the thrift store associates from the unit.

The route sales associates and spares have different compensation, supervision, benefits, and working conditions from that of the marketing representatives. Thus, the route sales associates and spares report directly to the regional sales supervisors, are assigned to a particular branch, bid on fixed routes, and are paid on a base plus commission basis. The marketing representatives report directly to the key account managers located at the key account client premises, work from their homes, are provided a company car which they park at home, are assigned variable daily routes, and are salaried.

The route sales associates and spares are eligible for paid sick leave and holidays, while the marketing representatives are not. The route sales associates and spares wear a uniform. There is no evidence that the marketing representatives wear a uniform, or if so, what that uniform is. While the marketing representatives may encounter route sales

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<sup>27</sup> 251 NLRB 1407 (1980).

associates and spares at a store in the course of the day, this is a chance, not a planned encounter. Finally, there has been no temporary or permanent interchange between marketing representatives and route sales associates or spares.

Likewise, the route sales associates and spares have different compensation, benefits, and working conditions from those of the thrift store associates. Thus, the route sales associates and spares service the Employer's wholesale business, are paid on a base rate plus commission basis, work away from the branch premises, are full-time, and work ten to eleven-hour days. The thrift store associates service the Employer's retail customers, are paid on an hourly basis, work at the branch premises, and are all part-time.

The route sales associates and the spares are eligible for sick leave, health insurance, and paid holidays, none of which is available to the thrift store associates. The route sales associates bid on routes, while thrift store associates have their schedules assigned to them. The two groups wear different uniforms. There have been no permanent transfers between thrift store associates and route sales associates or spares. The only instance of temporary interchange was a personal accommodation made for a route sales associate to work in a thrift store while his driver's license was under suspension. Finally, the daily interaction between the two groups is very limited since, for the most part, the route sales associates and spares are not at the branch facility during the day when the thrift store is open.

The Employer, in its post-hearing brief, asks that notice be taken of a 1994 Stipulated Election Agreement for an election in which the Union agreed to include the thrift store employees and the marketing representatives in a unit with route sales associates and spares at the Employer's New Hampshire locations. The Employer argues that the Union should, therefore, be foreclosed from excluding these two groups of employees in this proceeding. It has long been the Board's policy, however, not to consider itself bound by a bargaining history resulting from an election agreement in a unit stipulated by the parties rather than one determined by the Board. *The Grand Union Company*.<sup>28</sup> Moreover, I find the Employer's argument to be unpersuasive since the case did not result in the creation of an actual bargaining unit. I also note that the Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. *Bartlett Collins Co.*<sup>29</sup> In this case, while a unit that includes the thrift store employees and the marketing representatives *might* be an appropriate unit if petitioned for, it is clear that the employees sought by the Petitioner in this case share a community of interest sufficiently distinct from the thrift store employees and the marketing employees so that a unit limited to the petitioned-for employees is also appropriate. Therefore, I reject the Employer's argument that the Petitioner must seek the broader unit or that I must direct an election in the broader unit based on what the parties' stipulated to in 1994.

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<sup>28</sup> 176 NLRB 230, 231 (1969).

<sup>29</sup> 334 NLRB No. 76 (2001).

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All route sales associates and spare route sales associates employed by the Employer at its Manchester, Dover, Belmont, Hudson, Berlin, Littleton, and North Conway, New Hampshire, and Leominster, Massachusetts branch distribution facilities, but excluding all other employees, marketing representatives, thrift store associates, professional employees, clerical employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Chauffeurs, Teamsters & Helpers Local Union 633, a/w International Brotherhood of Teamsters.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*,<sup>30</sup> *NLRB v. Wyman-Gordon Company*.<sup>31</sup> Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the

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<sup>30</sup> 156 NLRB 1236 (1966).

<sup>31</sup> 394 U.S. 759 (1969).

eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*.<sup>32</sup> In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before June 18, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 25, 2002.

/s/ Robert P. Redbord

Robert P. Redbord, Acting Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 11th day of June, 2002.

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<sup>32</sup> 315 NLRB 359 (1994).